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Earl J. Braxton

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VAN OPHEM & VANOPHEM, PC
REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP, MI 48316-4447

EXAMINER

LE, HUYEN D

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/034,720
Filing Date: December 28, 2001
Appellant(s): BRAXTON, EARL J.

REMY J. VAN OPHEM
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/06/2010 appealing from the Office action mailed 04/05/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: claims 1-3, 5, 7, 8, 10, 12, 13, 15 and 21.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2,820,256	DAHL	1-1958
4,744,111	TEGG et al.	5-1988
4,380,836	BRAXTON	4-1983

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-2 ,5, 7,10,12,15,17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl in view of Tegg et al.

Dahl teaches a toilet shelter employing four walls which can be folded to a state best shown in Fig. 2 where adjacent walls lie superimposed. Lacking in Dahl is a base which is circumscribed by the side walls. Tegg et al teach a knock down toilet where base 11 is employed and shown to be circumscribed by the sides of the unit. As both teach toilet enclosures, it would have been obvious to the ordinary artisan to provide Dahl with a base and roof cooperating with the sides as taught by Tegg et al as the use of perfecting features of one device in the environment of another like device would have been prima facie obvious to the ordinary artisan, in order to glean the properties of said features.

Alternatively it would have been obvious to provide for the use of the wall connection scheme of Dahl to replace the scheme of Tegg et al as the two would have constituted obvious alternative assembly/disassembly schemes both shown used in identical art devices. The claim 5 "commode" is taught by Tegg et al at 53 and as Dahl teaches in col. 1, line 17, "a temporary privy" it would have been obvious to employ a "commode" therein.

The various states of folding are nothing more than method of intended use and do not patentably define in this apparatus claim environment. Furthermore, Dahl is capable of attaining any folded state that the instant device can attain.

2. Claims 3, 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Braxton '836.

The latter teaches, in col. 3, lines 21+, the use of rivets to connect hinges to wall panels of portable toilets, the use of which in Dahl would have constituted an obvious expedient known to the ordinary artisan.

(10) Response to Argument

Issue No. 1

Appellant argues that the enclosure shown in Fig. 2 of Dahl is not a transportable state and the hinge strip 40 in state would interfere with a stackable unit and thereby, cause a smaller number of units to be loaded on a flat truck (pages 19-20 of the Argument). Examiner disagrees with appellant. The language "in a full disassembled final folded state" in the claims does not add any additional structures which distinguish over the structure of the Dahl portable enclosure. In column 1, lines 51-55, Dahl teaches

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eight sections permanently connected together in such a manner as to permit the sections to be stacked for transportation in a preferred way but does not limit the final state of eight sections folded to be the only transportable state. Obviously, at any state as shown in Fig. 2, Fig. 3 or Fig. 4, the Dahl enclosure can be transportable. The assertion of the hinge strip 40 causing a smaller number of units to be loaded on a flat truck is pure speculation.

Appellant raises the issue of prima facie case of obviousness that there is no motivation, suggestion or inference whatsoever to combine the teaching of Dahl and Tegg et al. to obviate the applicant's invention because the references are contrary to each other (pages 23-25 of the remarks). All references fail to teach a loop enclosure collapsed to a final flat transportable stackable planar state having a thickness of about the two walls. Examiner disagrees with appellant. Dahl teaches a portable shelter in Fig. 2 showing a loop enclosure collapsed to a flat transportable stackable planar state having a thickness of about the two walls as claimed but lacks a base and a roof. On the hand, Tegg et al. teach a portable shelter having a base and a roof. The motivation to combine these references is based on the facts that both references teach a portable toilet shelter. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Dahl and Tegg et al to provide a shelter with a loop enclosure, a base and a roof.

Appellant argues that the element-by-element recitation of the invention with appropriate structural interrelationship to particularly point out and distinctly claim the subject matter is completely neglected (pages 27-28). Examiner disagrees with

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appellant. The element-by-element recitation as asserted by appellant merely recites “the enclosure being in a full disassembled final folded state” as shown in Fig. 9 of the present invention. The final state of the claimed enclosure in Fig. 9 does not show or add any additional structures (parts to the enclosure) which really distinguish over the enclosure shown in 2 of Dahl.

Issue No. 2

Appellant argues that one of ordinary skill would have no basis whatsoever combining the teaching of Dahl, Tegg et al. and Braxton because this is no suggestion, motivation or implication in this art to do so. Braxton teaches the used of bi-fold type collapse resulting in four layers (pages 31-32). Dahl teaches a portable shelter collapsed in two layers shown in Fig. 2 as claimed. Braxton teaches rivets connecting the hinges to the wall panels of a collapsible toilet shelter. Since both references are in the portable toilet art, it would have been obvious to one of ordinary skill to combine the references. The use of teaching of Braxton is for the rivets. Braxton does not need to have the shelter collapsed into two layers in order to be used to combine with Dahl. It is reminded that teaching, suggestion or motivation to modify or to combine the references is founded either in the references themselves or in the knowledge generally available to one skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the use of a base and the use of rivets to secure various parts of a portable toilet are not only taught by identical art devices in Tegg et al. and Braxton but they are common knowledge to the ordinary skill in the art.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Huyen Le/

Primary Examiner, Art Unit 3751

Conferees:

/Gregory L. Huson/

Supervisory Patent Examiner, Art Unit 3751

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752